STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EUREKA TEACHERS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. SF-CE-872
v.	)	PERB Decision No. 528
EUREKA CITY SCHOOL DISTRICT,	)	October 8, 1985
Respondent.	)	

Appearances; Ramon E. Romero, Attorney for Eureka Teachers Association, CTA/NEA; Harland & Gromala by Richard A. Smith for Eureka City School District.

Before Hesse, Chairperson; Morgenstern and Porter, Members.

DECISION

HESSE, Chairperson: The Eureka Teachers Association, CTA/NEA (Association) excepts to the proposed decision of a Public Employment Relations Board (PERB or Board) administrative law judge (ALJ) rejecting the Association's contention that the Eureka City School District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act).[1] We agree with the

[1]The EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in relevant part:

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise

ALJ's dismissal of the charges for the reasons set forth below.

FACTS

The ALJ found, and we agree, that this dispute centers around language in the collective bargaining agreement effective July 1, 1983. Article 16 of that document, entitled "Organizational Security" reads in relevant part:

> 1. Any teacher employed on or after July 1, 1983, who is not a member of the Eureka Teachers Association CTA/NEA, or who does not make application for membership within 30 days from the date of commencement of teaching duties, shall become a member of the Association or pay to the Association a fee in an amount equal to unified membership dues, initiation fees and general assessment, payable to the Association. In the event that a teacher shall not pay such fees directly to the Association or voluntarily authorize payment through payroll deductions, the District shall automatically deduct said amount through regular payroll deductions.
>
> . . . . . .
>
> 5. For a teacher employed before July 1, 1983, a maintenance of membership provision is provided as follows:
>
> Once a bargaining unit employee joins the Association, the member shall remain a member for the duration of this agreement. However, no such arrangement shall deprive

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> to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

> the employee of the right to terminate his/her obligation to the Association within a period of 30 days, commencing July 1 of each year. The District shall only deduct from a members pay the Association dues amount as indicated on the payroll deduction form.

The dispute in this case arose when the Association requested that the agency fee provision (paragraph 1) be applied to the District's "temporary" teachers, even though they had been employed by the District continuously for a number of years prior to July 1, 1983. The District, on the other hand, interpreted Article 16 to mean that the "maintenance of membership" clause (paragraph 5) applied to all teachers, including temporary ones, who were employed by the District in the school year immediately prior to July 1, 1983, and that the agency fee provision applied only to those teachers "newly hired" on or after July 1.

The dispute over the contract interpretation involved fees from nine temporary teachers: six adult education teachers, all of whom had worked for the District continuously since their initial hire dates; and three teachers who worked in positions funded by grants received by the District on a year-to-year basis. Fringe benefits received by the nine were not suspended at the termination of the 1982-83 school year but, rather, were paid continuously through the summer. None of the positions held by the nine was declared vacant, nor were vacancies even advertised for those positions. The school board, however, had to approve specifically filling the nine

positions, and did so on two dates (July 11, 1983 and September 19, 1983).

The Association filed a charge alleging that the District violated the Act by failing to bargain in good faith and by making a unilateral change in the terms and conditions of employment when it established a policy for temporary teachers that placed them in the "maintenance of membership" category as opposed to the "agency shop" category.

DISCUSSION

The ALJ ruled that the case was, at most, a contract dispute, and that the Association failed to show by a preponderance of the evidence that (1) there was a breach of the agreement, and (2) the breach amounted to a change in policy with a generalized effect or continuing impact on the terms and conditions of employment. (See Grant Joint Union High School District (1982) PERB Decision No. 196.)

On appeal to the Board, the Association argues that PERB has the authority to address contract violations that also violate section 3543.5(c) of the Act.[2] In support of this proposition, the Association cites Victor Valley Joint Union High School District (1981) PERB Decision No. 192 and Chico

[2]The Association's exceptions can be read to imply that the Board should also interpret the contract because (since there is no provision for binding arbitration) there is no other forum available to the parties. The Board's jurisdiction is clearly fixed by statute. Even if we were to agree that no other forum is available to the parties, there is no authority for extending the Board's jurisdiction in such a circumstance.

Unified School District (1983) PERB Decision No. 286. However, the Association misapplies those cases. The Board did rule on whether the employer violated the contract, but only because the employer's action independently violated the Act by unilaterally changing a policy or procedure. Here, the Association has failed to prove that there was a change in a District policy.

To establish a change in policy, the Association would need first to prove what the existing policy was. That can be accomplished by establishing what the past practice was or by relying on contract language which addresses the point. Where the contract language is ambiguous, conduct of the parties or other extrinsic evidence may be used to reflect the intent of the parties.

Here, past practice is not relevant as the parties mutually agreed to change the past practice of having a universal maintenance of membership provision to a "two-tier" system providing maintenance of membership for one group and agency fees for another. The contract language is ambiguous with respect to the temporary employees, and no evidence was introduced at the hearing which would definitively demonstrate a mutual understanding or intent of the parties. These circumstances do not reflect any policy change, and thus do not constitute an independent violation of the Act.

The District did not clearly repudiate any prior understanding, agreement, or practice, but merely interpreted

the meaning of contract language in a reasonable way, albeit differently than did the Association. Thus, the District's action did not undermine the basic policy underlying the Act, which is the fostering of the negotiation process. (See Grant Joint Union High School District, supra, at p. 8.)

Therefore, this case is, at most, a contract dispute, as the Association has failed to prove conduct by the District amounting to a violation of EERA.

ORDER

The unfair practice charge in Case No. SF-CE-872 is hereby DISMISSED in its entirety.

Members Morgenstern and Porter joined in this Decision.